

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

R. WAYNE JOHNSON
TDCJ-CID #282756

v.

EMILY KENNEDY

§
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§
§
§

C.A. NO. C-05-228

**MEMORANDUM OPINION AND ORDER DENYING PLAINTIFF'S
MOTION TO REFILE AND DISMISSING PLAINTIFF'S
COMPLAINT AND AMENDED COMPLAINT**

On October 7, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 16). After ample opportunity, no objections have been filed by either party. This Court regards such omission as each party's agreement with and acceptance of the Magistrate Judge's findings of fact and conclusions of law. Having reviewed the pleadings on file, the Court finds no clear error in the Magistrate Judge's Memorandum and Recommendation. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). This Court adopts as its own the findings and conclusions of the Magistrate Judge.

After the Magistrate Judge issued her Memorandum and Recommendation, plaintiff filed a Motion to Refile (D.E. 17) and an Amended Complaint (D.E. 18). In his Motion to Refile, plaintiff states that the filing fee "will be on the way from trust fund soon" (D.E. 17, p. 1). To date, plaintiff has not paid the filing fee. Accordingly, plaintiff's Motion to Refile is denied (D.E. 17), and plaintiff's Complaint (D.E. 1) and

Amended Complaint (D.E. 18) are dismissed without prejudice to plaintiff refiling his lawsuit when he is able to pay the full filing fee.

ORDERED this 19th day of February, 2006.


HAYDEN HEAD
CHIEF JUDGE